IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 933 OF 1994

Brigedier Shankarrao Damaji
Parab .. Petitioner

Vs.

Dr. Narayan Dattatraya Bagade .. Respondent

Mr. R.S. Apte for Petitioner.
Mr. A.A. Kumbhakoni for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 27, 2005.

ORAL JUDGMENT:

1. By an earlier order dated 21/3/2003 this Civil Revision Application was dismissed, but in the absence of the learned counsel for the petitioner-landlord and consequently by order dated 28/7/2003 passed in Review Petition No.11 of 2003 the Civil Revision Application came to be restored.

2. The petitioner is the landlord in respect of the suit premises, namely, residential Flat No.A3/17, situate in "A" Type Building No.3, 2nd floor in Tridalnagar of Yeravada area under the Pune Municipal Corporation and admeasuring about 1100 sq.ft. with

three bed rooms, a kitchen, a leaving room and two bath rooms. The landlord had approached the competent authority under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (the Bombay Rent Act for short) by filing an application under Section 13A(2) contending therein that the suit premises were given to the respondent-Medical Practioner on leave and license basis by an agreement dated 22/9/1986 and the period of license had expired on 30/9/1989. The respondent did not vacate the premises on expiry of the license period and, therefore, the landlord filed the said application seeking possession of the suit premises. The application was opposed by the licensee on the ground that it was not tenable under Section 13A(2) of the Bombay Rent Act in as much as the premises were handed over to him for residence as well as for medical consultancy practice. If the license was for a composite purpose of residence and for professional practice, an application filed under Section 13A(2) of the Bombay Rent Act would not be tenable, as per the licensee. In addition it was contended that the agreement was dated 22/9/1986 and the provisions of Section 13A(2) of the Bombay Rent

Act were brought into force with effect from 1/10/1987. The Competent Authority held that the second objection was tenable and on the ground that the operation of Section 13A(2) was not retrospective, the application was held untenable. This order in the first round was challenged in C.R.A. No.456 of 1990 which came to be partly allowed vide judgment and order dated 7/4/1994. The application was remanded to the Competent Authority to decide the issue as to whether the suit premises were for composite purpose or for singular purpose of residence or non-residence. This court also noted while remanding the application for fresh adjudication that if the findings of the Competent Authority were that the premises were given for non-residential purpose, in that event the amended Section 13A(2) would not be applicable.

3. Mr. Apte, the learned counsel for the landlord placed reliance on the order of remand passed by this court and submitted that the impugned order rejecting the application on the ground that the license was for dual/composite purpose and, therefore, the application under Section 13A(2) was not

maintainable, is unsustainable. There is no dispute that on remand also additional evidence was recorded and has been duly considered by the Competent Authority. The only issue that is required to be decided in this Civil Revision Application is whether the application filed under Section 13A(2) was maintainable when the suit premises were given for a composite purpose of residence and medical consultation.

4. In the Application No.23 of 1989 moved by the landlord under Section 13A(2) of the Bombay Rent Act the landlord in para 5 states as under :-

> "5. That the premises are given to the licensee for use as residence and Medical Consultancy practice. However, the dominant use is residence. The licensee has his own Medical Consultancy Practice premises at 1, Mahatma Gandhi Road, Pune Camp, Pune 1. He did not use the premises described above for medical consultancy. At present he is practising at Satara."

4A. The landlord thus made it clear that the premises were given to the licensee for use as residence and medical consultancy practice but that to dominant use as residence. In the oral depositions recorded before the Competent Authority, the landlord admitted that the premises in dispute were given by him for doing medical practice. It also came in the evidence that at the relevant time the licensee was staying in the suit premises along with his daughter and his wife and two children were at Satara. Some equipments like X-ray machines etc. were installed in the suit premises. The licensee held qualification of M.S. (General Surgery and D Ortho). In his examination in chief the licensee admits that his wife possess the qualification of B.A.M.S. and she has been doing dispensary practice at Satara. He also examined independent witnesses in support of his case that the suit premises were being used for medical profession as well even though he had two other consultation rooms. The first witness was Eknath Tukaram Margaje who was working as a liftman in the

"A" Type Building in which the suit premises are located. The liftman stated that between 9 a.m. to 12 noon patients used to come to dispensary which was one room from the suit premises and he used to see the patients during the entire tenure of three years plus. The second witness was Mr. Vishweshwar Lingappa Mokashi who stated that the licensee was his family doctor and he was having his medical practice in the suit premises since the beginning. The third witness was Mina Chawada who was staying in the neighbourhood who stated that she was admitted in the licensee’s hospital in the suit premises. She had seen X-ray machines and all sorts of medical equipments for operation etc. in the suit premises.

5. On assessment of this evidence, the Competent Authority recorded a finding that the suit premises were being used for composite purpose, namely, residence and professional practice and the medical practice was not by way of incidental use of the premises. During the period of three years plus the landlord had never objected the premises being used for composite purpose.

5A. Mr. Kumbhakoni, the learned counsel for the licensee has relied upon a three Judge Bench decision in the case of Dr. Gopal Das Verma vs. Dr. S.K. Bhardwaj and anr. reported in **AIR 1963 SC 337** and more particularly the following observations:-

> "...In other words, where premises are let for residential purposes and it is shown that they are used by the tenant incidentally for commercial, professional or other purposes with the consent of the landlord the landlord would not be entitled to eject the tenant even if he groves that he needs the premises bona fide for his personal use because the premises have by their user ceased to be premises let for residential purposes alone. This position cannot be seriously disputed."

6. The Competent Authority further noted that Explanation (b) below Section 13A(2) of the Bombay Rent Act stated that an agreement of license in writing shall be conclusive evidence of the facts

stated therein and in the agreement at Exh.35 there is a clear mention made that the premises were given for both the purposes i.e. residence and medical consultancy practice. The plea of the landlord that the provisions of Section 5(8A) of the Bombay Rent Act would apply to the premises which are only given for business purposes did not find favour.

7. Thus, on any count, the impugned order passed by the Competent Authority does not call for any interference exercising powers of revision and, therefore, the challenge to the said order must fail.

8. Consequently, the Civil Revision Application is hereby dismissed. Rule discharged with no order as to cost.

(B.H. Marlapalle,J.)